

The Appeals Board finds that the evidence presented at the preliminary hearing establishes that it is more probably true than not claimant suffered accidental injury arising out of and in the course of her employment and the decision by the Administrative Law Judge should be reversed.

During the period from approximately October 14 or 15, 1994 through October 28, 1994 claimant worked as a truck driver for the respondent driving a truck which had a seat jammed back so that she was required to stretch to reach the pedals with her toes. During that time she developed pain and swelling in her left leg. The condition was diagnosed as a deep venous thrombosis and she was hospitalized from October 28, 1994 through November 2, 1994.

Prior to hospitalization she was referred to the company physician who had indicated the condition was "[p]robably not job related." He saw her once and gave no explanation for his conclusion. The physician, Dr. Kenneth R. Holladay, who treated claimant at the hospital suggests a contrary possibility in his letter report of March 23, 1995. He states that "[i]f Doris, in the course of her driving, sat prolonged periods of time with her left leg dependent, she could develop deep venous thrombosis."

The record also includes a report from Dr. Sharon McKinney. At the time of the preliminary hearing respondent's counsel objected to the report from Dr. McKinney on the grounds they had not been provided in connection with the benefit review conference. Respondent's counsel then withdrew that objection. Respondent's counsel here acknowledges withdrawal of that objection but asserts an additional objection that the report was not provided to respondent within the time frames specified in K.S.A. 44-515. This latter objection was not, however, raised at the time of the preliminary hearing. Under these circumstances, the Appeals Board finds the reports of Dr. McKinney should be admitted and considered as a part of the record in this case.

The report of Dr. McKinney dated October 13, 1995, states:

"With this history and her prior lack of medical problems this lady's deep vein thrombosis was caused by sitting in a stressed position for an extended period where the muscles were pressured and this decreased the blood flow enough that she developed the deep vein thrombosis."

The report of Dr. McKinney along with the compatible report from Dr. Holladay convince the Appeals Board that more probably than not claimant's condition is related to her work activities.

Respondent also raises an additional issue, i.e., whether claimant gave notice as required by K.S.A. 44-520. The Administrative Law Judge did not rule on this question.

The Appeals Board, therefore, remands this claim for further decision by the Administrative Law Judge. That decision should include his ruling on the issue of whether timely notice was given. If timely notice is found, issues remain regarding what medical benefits should be awarded and what, if any, temporary total disability benefits should be awarded.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated January 24, 1996, should be, and the same is hereby, reversed and this claim is remanded for further findings and action consistent with this Order. The Appeals Board does not retain jurisdiction over this proceeding.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c:     Roger D. Fincher, Topeka, KS  
       D'Ambra M. Howard, Overland Park, KS  
       Steven J. Howard, Administrative Law Judge  
       Philip S. Harness, Director